

Application Serial No. 10/568,209
Response to Office Action dated July 27, 2009

PATENT
Docket: CU-4693

REMARKS

In the Office Action, dated July 27, 2009, the Examiner states that Claims 72-92 are pending, and Claims 72-92 are rejected. By the present Amendment, Applicant amends the claims and the specification.

In the Claims section, please amend claims 72 and 92. These claims have been amended to further clarify that the aperture in the bottom wall is located in the epicenter. Support for this amendment can be found in the original disclosure, for instance in the Drawings. These claims have also been amended to further define the bottom wall as having "an indent section located about the aperture and which extends from the aperture thereby shielding the elongated body from water". These features are fully supported by the specification. For instance, the location of the aperture is clearly illustrated as part 67 in the figures and specifically in Fig. 13A. The "indent section" is also supported by the original disclosure, for example on page 8, lines 15-16, of the publication WO 2005/01576. Furthermore, the claims have been amended to add that the side wall has lobed sections which when stacked in the offset section off the plant pot below. This is also fully supported by the original disclosure including the figures. No new matter has been added by way of this amendment. The amendments to the claims can be viewed in the Amendments section in the Listing of Claims beginning on page 2 of this paper.

On November 10, 2009, the Examiner conducted an interview with counsel for the Applicant. The Examiner indicated that the amendment to recite that the aperture in the bottom wall is in the center should be clarified. The Examiner also indicated that the feature of the indent section surrounding the aperture and shielding the elongated member from water in the reservoir would overcome the rejection based on Lund and Stone, but may be problematic with regard to Johnson Sr. The Applicant thanks the Examiner for his time.

Claims 72-74, 76-81 and 83-90 are rejected under 35 U.S.C. §103(a) as being

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unpatentable over Stone (GB 2,369,980) in view of Lund (5,555,676). The Examiner also rejected claim 75 under 35 U.S.C. §103(a) as obvious over Stone in view of Lund and in further view of Russell (U.S. 61,877); claim 82 over Stone in view of Lund and further in view of Johnson, Sr. (U.S. 3,452,475); and claim 91 as unpatentable over Stone in view of Lund and further in view of Keats (WO 1998/056233).

The Applicant respectfully disagrees because not all of the features of the claims are taught, suggested, or disclosed by the references.

The Applicant submits that the features of the side wall having lobed portions is not disclosed or suggested by the combination of references. This feature alone distinguishes the present invention. The Applicant submits that claims 72-92 are non-obvious and allowable because all the features are not taught, disclosed or suggested by the combination of references and respectfully requests that the rejection be withdrawn.

In addition, the Examiner on page 8 provides that "centrally located" means that the aperture could be anywhere in the bottom wall but not at the edge. The Applicant respectfully disagrees and provides that a person of skill in the art would understand that centrally located means closer to a central point rather than closer to any side. However, in the spirit of furthering prosecution, amended claim 72 has a combination of features including an aperture located in the "epicenter". Support for this feature is found in the original disclosure. As can be seen from the Drawings, the aperture is located at a point equidistant between two opposite points on the periphery. This aperture is understood in the art to be located in the "epicenter". The Applicant submits that this amendment clarifies the location of the aperture in the present invention.

Furthermore, this feature is not found in Stone. Moreover, this feature is not found in Lund either. The Applicant submits that at least for this reason, the present invention claimed in independent claims 72 and 92 is not obvious and again requests that the Examiner withdraw this rejection.

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The Applicant previously asserted that in Stone, the apertures (28), pass through the "dividing wall" (24). This "dividing wall" is not the bottom wall of the individual plant pot. The "dividing wall" divides the "open compartment" (12) and the "lower enclosed" (14) compartments of the Stone plant pot. A person skilled in the art understands that the "bottom wall" is defined in the present application as the "base" of the plant pot and is clearly designated with reference numeral 3. By way of comparison, the bottom wall of the present invention should correspond to the bottom portion of the "lower enclosed compartment 14" and not to the "dividing wall". Unlike the present invention, the "lower enclosed compartment 14" has a *non*-centrally located aperture, or a "discharge outlet 18", and the configuration of this *non*-centrally located aperture is *necessary* for the Stone system to work by the "discharge outlet 18" receiving spill off from the "reservoir 26". So, the Applicant continues to assert that although the appropriate feature related to the bottom wall would be the bottom portion of the "lower enclosed compartment 14", the Applicant submits that neither the "dividing wall" nor the "lower enclosed compartment" have an aperture in the epicenter as in amended claims 72 and 92 of the present invention. Specifically, the Stone and Lund combination, does not disclose or suggest the aperture being in the bottom wall and located in the epicenter. Russell, Johnson Sr. and Keats do not cure the deficit in the Stone Lund combination either because at least these features are not disclosed or suggested by those references either.

Furthermore, the feature wherein the bottom wall has "an indent section located about the aperture and which extends from the aperture thereby shielding the elongated body from water in the reservoir region" is also not disclosed in Stone or Lund, in whole or in combination. The Examiner agrees that this is the case, but indicated in the Interview that possibly Johnson Sr. can teach this feature.

Again, the Applicant respectfully disagrees. In Johnson Sr., the annular element 60 connects to the post member 14. The post member 14 in turn encloses the liquid pipe 22. By way of comparison with the present invention, if the liquid pipe is

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considered the same as the elongated body of the present invention, then clearly, there is no indent section of the post member. Moreover, there are post apertures 44 which according to Johnson Sr. "serve a separate and distinct purpose" as overflow gutters and therefore, clearly the post member 14 of Johnson Sr. cannot possibly serve the purpose of the indent section of the present invention which includes shielding the elongated body from water in the reservoir section. In fact, Johnson Sr. does not have a reservoir section.

If, however, it is the post member 14 itself that is considered the same as the elongated body of the present invention, then consider that a purpose of the indent section, to shield the elongated body from water in the reservoir region, cannot possibly be met since as you can see in Johnson Sr. Fig. 1, there are post apertures 44 in the post member 14, which would provide the free flow of water thus wetting the post member. In fact, as provided above, a "distinct purpose" of the post apertures 44 is to act as overflow gutters, which is quite the opposite of what is intended by the indent section. Moreover, the annular element 60 of Johnson Sr. does not shield the post member 14, nor the internally located liquid pipe 22, from water in a reservoir section because there does not appear to be a reservoir section in Johnson Sr. at all. Therefore, the Applicant submits that although the Examiner indicated that the indent section of claims 72 and 92 may be found in Johnson Sr., there is not such feature disclosed or suggested by the combination of references.

The Applicant submits that since the references, in whole or in combination, do not disclose or suggest all of the features of claims 72 and 92, claims 72 and 92 are non-obvious and allowable. It is axiomatic that if an independent claim is allowable, then a claim dependant therefrom is likewise allowable. The Applicant respectfully request that the remarks made over claim 72 be both reflected in the dependant claims, 73-91, and also overcome the rejection of those claims as well. The Applicant respectfully submits that claims 72-92 are non-obvious and request that the Examiner withdraw this ground of rejection of these claims.

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In light of the foregoing response, all the outstanding objections and rejections are considered overcome. The Applicant respectfully submits that this application should now be in condition for allowance and respectfully requests favorable consideration.

Respectfully submitted,

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Date

Zareefa B. Flener

Attorney for Applicant
Zareefa B. Flener
c/o Ladas & Parry LLP
224 South Michigan Avenue
Chicago, Illinois 60604
(312) 427-1300
Reg. No. 52,896